

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 15, 2004

The Honorable Alberto R. Gonzales
Counsel to the President
The White House
Washington, DC 20500

Dear Judge Gonzales:

As you know, for over a year I have sought answers from the Department of Justice, the FBI, the CIA, and the Department of Defense regarding reported and, in some instances, documented cases of the abuse of prisoners in U.S. custody.

Contrary to the statements of some Administration officials, the photographs and reports that have recently emerged of prisoner abuse in Iraq depict an interrogation and detention system operating contrary to U.S. law and the Geneva Conventions. Such acts are not limited to Iraq. This system includes policies that allowed the transfer of a suspect to Syria, a country that the President himself has condemned for its systematic use of torture. In addition, reports of abuse continue to emerge from Afghanistan and Guantanamo Bay, Cuba.

In order that all Members of Congress have timely, detailed, and accurate information about the role of the Administration in developing these policies and practices, I ask that you respond to the following questions by June 25, 2004.

1. When the Attorney General appeared before the Senate Judiciary Committee on June 8, 2004, I asked him if the President has signed any directive with respect to interrogation of detainees, prisoners or combatants. The Attorney General did not answer this question directly, but rather stated that the President "has made no order that would require or direct the violation of any law of the United States enacted by the Congress, or any treaty to which the United States is a party as ratified by the Congress, or the Constitution of the United States." He later cited the President's order to the Department of Defense to treat al Qaeda and Taliban detainees humanely and, to the extent consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions.

Please describe any and all orders or directives, including the one noted above, signed by the President, with respect to interrogation of detainees, prisoners or combatants. Please provide copies of all such documents. If such documents are classified, please arrange for myself and appropriately cleared staff to review them.

2. On Friday June 11, 2004, the President was asked the following question at a press conference: "Mr. President, the Justice Department issued an advisory opinion last year declaring that as Commander-in-Chief you have the authority to order any kind of interrogation techniques that are necessary to pursue the war on terror ... [D]id you issue any such authorization at any time?" The President answered: "No, the authorization I issued ... was that anything we did would conform to U.S. law and would be consistent with international treaty obligations. That's the message I gave our people."

Later in the press conference, a reporter pressed the President on this topic: "What we've learned from these memos this week is that the Department of Justice lawyers and the Pentagon lawyers have essentially worked out a way that U.S. officials can torture detainees without running afoul of the law. So when you say that you want the U.S. to adhere to international and U.S. laws, that's not very comforting." The President responded, "The instructions went out to our people to adhere to law. That ought to comfort you. We're a nation of law. We adhere to laws. We have laws on the books. You might look at those laws, and that might provide comfort for you. And those were the instructions out of -- from me to the government."

Please provide a copy of the authorization and instructions the President referred to in the exchange noted above from the June 11 press conference.

3. Does the White House agree with the arguments reportedly advanced in the August 1, 2002, memorandum signed by Jay Bybee, then the AAG for the Office of Legal Counsel (OLC), that (A) torturing enemy combatants in U.S. custody outside the United States may be justified, and (B) the torture statute may be unconstitutional if applied to interrogations conducted pursuant to the President's Commander-in-Chief powers? In your opinion, would this immunity from prosecution extend to the torture of U.S. citizens who are believed to be enemy combatants or members of al Qaeda, if captured and held overseas?
4. In addition to the specific documents referenced in this letter, please describe any communications your office has had with the DOD or CIA Office of General Counsel, or DOJ-OLC, regarding interrogation methods. When did these conversations begin and how frequently did they occur? [Please provide me with an index of all such communications.]
5. When did President Bush first become aware of reports of prisoner abuse in Iraq, Afghanistan, and elsewhere by the International Committee of the Red Cross? By organizations such as Human Rights Watch and Amnesty International? Was your office asked for advice on how to restructure the interrogation programs in response

to such reports? Did your office modify and/or approve of revised rules at any point in response to such reports or in response to accounts in the media of abuse?

6. Please provide copies of the following documents, including any and all attachments to such documents. If you refuse to provide any of the documents requested, please explain the basis for your refusal.

- (A) Memorandum for Timothy E. Flannigan, Deputy Counsel to the President, from John Yoo, Deputy Assistant AG, Office of Legal Counsel, Re: The President's Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them (Sept. 25, 2001);
- (B) Memorandum for Alberto Gonzales, Counsel to the President, from Patrick F. Philbin, Deputy Assistant Attorney General, OLC, Re: Legality of the Use of Military Commissions to Try Terrorists (Nov. 6, 2001);
- (C) Memorandum for Alberto Gonzales, Counsel to the President; William J. Haynes, General Counsel, DoD, from Jay S. Bybee, Assistant Attorney General, Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees (Jan. 22, 2002);
- (D) Draft Memorandum for the President from Alberto Gonzales, Counsel to the President, Re: Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban (Jan. 25, 2002), and the final version of this Draft Memorandum;
- (E) Memorandum for Alberto Gonzales, Counsel to the President from Colin Powell, Re: Response to the Gonzales draft memo of January 25, 2002 (Jan. 26, 2002);
- (F) Memorandum for Alberto Gonzales, Counsel to the President, from William Howard Taft IV, Department of State Office of Legal Advisor, Re: Comments on Your Paper on the Geneva Convention (Feb. 2, 2002);
- (G) Memorandum for Alberto Gonzales, Counsel to the President (written for the CIA), from Jay S. Bybee, Assistant AG, Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340 – 2340A (Aug. 1, 2002);
- (H) Draft Memorandum for Defense Secretary Rumsfeld from Working group appointed by DoD General Counsel, William Haynes II, Re: Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical,

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Policy, and Operational Considerations (Mar. 6, 2003), and the final version of this Draft Memorandum;

- (I) Memorandum for General James T. Hill from Defense Secretary Rumsfeld, Re: Coercive interrogation techniques that can be used with approval of the Defense Secretary (based on conclusions of the March 6 memo) (Apr. 2003); and
- (J) Any other memoranda prepared by or for the Office of the White House Counsel or for the President since September 11, 2001, regarding the treatment or interrogation of prisoners of war and/or enemy combatants.

Thank you in advance for what I expect to be detailed and comprehensive answers to the above questions.

Sincerely,



PATRICK LEAHY
Ranking Democratic Member